

REPRESENTATIVES FOR PETITIONER:

Marcia J. Olsen, President/Director, Joshu Zen Temple

REPRESENTATIVE FOR RESPONDENT:

Marilyn Meighen, Attorney at Law

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

JOSHU ZEN TEMPLE	)	Petition No.: 29-005-15-2-8-00163-15
	)	
Petitioner,	)	Parcel No.: 14-10-24-02-02-006.000
	)	
v.	)	County: Hamilton
	)	
HAMILTON COUNTY ASSESSOR,	)	Township: Delaware
	)	
Respondent.	)	Assessment Year: 2015

Appeal from the Final Determination of the  
Hamilton County Property Tax Assessment Board of Appeals

**May 1, 2017**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

1. A taxpayer seeking an exemption, including a church or religious society, has the burden of proving that its property qualifies. Joshu Zen Temple sought an exemption for a home where its co-founder and priest lived. But it offered nothing to show that the priest performed the pastoral duties of an ordained minister as is required to qualify the home as

a parsonage under Ind. Code § 6-1.1-10-21. Nor did it offer any evidence beyond the priest's vague testimony about conducting outreach activities and holding religious meetings and meditation classes to show that religious uses predominated over non-exempt uses, as required to qualify the home for a religious-purposes exemption under Ind. Code § 6-1.1-10-16.

### **PROCEDURAL HISTORY**

2. The Temple sought to exempt its property from taxation for the 2015 assessment year. The Hamilton County Property Tax Assessment Board of Appeals (“PTABOA”) denied the Temple’s application and found the property to be 100% taxable. The Temple then timely filed its Form 132 petition with the Board.
3. On January 31, 2017, our designated administrative law judge, Jacob Robinson (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the property.
4. Marcia J. Olsen, the Temple’s president/director, and Kim Powell, deputy assessor, testified under oath.
5. The Temple submitted the following exhibit:
  - Exhibit 1: Statement of “Six Main Points,” dated January 1, 2017
6. The Assessor submitted the following exhibits:
  - Exhibit A: Aerial map of Willow Crest neighborhood
  - Exhibit B: Photographs of 14542 Sowers Dr. (subject property), 14582 Sowers Dr., 8575 E. 146<sup>th</sup> St., 14522 Sowers Dr., 14502 Sowers Dr., 14482 Sowers Dr., and 14462 Sowers Dr.
  - Exhibit C: Excerpt from section 2.07 of zoning ordinance—R2 Residential District, and zoning map
7. The following additional items are recognized as part of the record:
  - Board Exhibit A: Form 132 petition with attachments
  - Board Exhibit B: Hearing notice

**OBJECTION**

8. The Temple asked the Assessor's witness, Kim Powell to explain the relevance of the Assessor's exhibits. The Assessor objected to the question, and the ALJ sustained the objection. After some discussion, it became apparent that the Temple was objecting to the exhibits themselves on grounds of relevance (although she had previously indicated that she had no objection to their admission). The ALJ took that objection under advisement.
9. We overrule the objection. Evidence is relevant if it has a tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence to our determination. *See Ind. Evidence Rule 401.* Powell's testimony and the Assessor's exhibits show the residential character both of the Temple's property and of the neighborhood in which it is located. Thus, the exhibits offer some support for the Assessor's contention that the property is just a private residence.

**FINDINGS OF FACT**

10. There is little evidence describing the Temple as an organization. For example, the Temple did not offer its articles of incorporation, by-laws, or any other organizational documents. Olson referred to the Temple as some type of religious organization, presumably associated with Zen Buddhism. She and her husband apparently formed the Temple in 1976, when they bought a church in California to conduct what she described only as "religious meetings." Olsen was ordained as a nun in 1976 and as a priest in 1989. Her husband was also ordained. It is not clear whether they were ordained by the Temple or by another organization. Olsen did not explain the role of ordained priests or nuns within the Temple in particular, or Zen Buddhism in general. Indeed, the Temple did not offer any evidence relating to its structure or operations. *Olsen testimony; Pet'r Ex. 1.*

11. The property at issue is a home in Fishers that is surrounded by other residences. Its neighborhood is zoned R2 Residential. In 2007, Olson and her husband moved from California to the Fishers property. Olsen had family in Fishers and she needed their help to care for her husband, whose health was declining. Olsen eventually had to put her husband “in care.” Her daughter and five grandchildren also lived with Olsen at the property from August 2014 to February 2015. *Resp’t Exs. 1-3; Powell testimony.*
  
12. The Temple offered little evidence about what the property was used for other than as a residence for Olsen and various family members. Olsen conducts outreach to educate the community about the Temple, but there is nothing to show what that outreach entails much less to show how, if at all, it relates to the property. Olsen testified that she conducts religious meetings at the property, but there is nothing in the record to show how often those meetings occur. The same is true for Olsen’s testimony that she holds meditation classes at the property.<sup>1</sup> And she did not explain how those classes relate to the Temple or its religious beliefs. *Olsen testimony.*

## CONCLUSIONS OF LAW

### A. Burden of Proof

13. While all tangible property is generally subject to taxation, the legislature may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Const., Art. 10 § 1. Because exemptions relieve properties from bearing their fair share of the cost of government services, they must be strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer therefore always bears the burden of proving that it is entitled to the exemption it seeks. *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).

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<sup>1</sup> Olsen referred both to meditation “meetings” and to meditation “classes.” She did not explain the difference between the two. We refer to them collectively as “meditation classes.”

14. That burden applies to proceedings before the Board. Our proceedings are *de novo*, meaning that we base our decisions on evidence and arguments offered at our hearings. A taxpayer's burden is to prove its claim to us, not to demonstrate that a PTABOA's determination was incomplete or relied on faulty reasoning. Unfortunately, the Temple approached this appeal as if the opposite was true; it repeatedly demanded that the PTABOA clearly and concisely explain its decision to deny the Temple's exemption application. As a result, the Temple offered little evidence to support its claims.

## **B. The Temple's claims**

15. The Temple claims that its property should be 100% exempt under two different provisions: (1) Indiana Code § 6-1.1-10-21(b), which exempts certain parsonages; and (2) the general exemption statute (Indiana Code § 6-1.1-10-16(a)). We address the claim for a parsonage exemption first.

### **1. Parsonage exemption**

16. Indiana provides a tax exemption for “[a] building that is used as a parsonage” and the “tract of land, not exceeding fifteen (15) acres, upon which a building that is used as a parsonage is situated” if it is owned by, or held in trust for the use of, a church or religious society. I.C. § 6-1.1-10-21(b). To obtain the parsonage exemption, a church or religious society must provide the county assessor with an affidavit signed under oath by the church's or religious society's head rabbi, priest, preacher, minister or pastor at the time it applies for the exemption. The affidavit must state that the parsonage is being used to house the church's priest, preacher, minister or pastor, and that none of the parsonage is used to make a profit. I.C. § 6-1.1-10-21(c).<sup>2</sup>
17. The primary case interpreting the parsonage exemption is *Ind. Assoc. of Seventh-Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936 (Ind. Tax Ct. 1987). In that case, a not-for-profit corporation that owned churches and other property in Indiana

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<sup>2</sup> It is not clear whether the Temple filed the required affidavit with its exemption application. Because the Assessor has not raised that issue, we need not address it.

claimed a parsonage exemption for half a duplex that it used primarily to house ministerial employees of its Indiana conference and office ministerial staff. *Ind. Assoc. of Seventh-Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 937-38 (Ind. Tax Ct. 1987). *Id.* at 937-38. The taxpayer considered all the people who occupied the duplex to be ministers under its doctrine. *Id.* at 938.

18. The State Board of Tax Commissioners denied the exemption. On judicial review, the Tax Court read the statute as requiring that a parsonage “must be ‘used to house one of the church’s or religious society’s . . . ministers’” in order to qualify for exemption. *Id.* at 939 (quoting I.C. § 6-1.1-10-21(b)) (omissions in original). Because the Indiana courts had not previously defined the term minister as it applied to the parsonage exemption, the Court looked to decisions interpreting similar exemption provisions in other states. *Id.* Those courts examined various definitions of the terms minister and parsonage and determined that to get an exemption, a resident at least needed to perform the acts of an ordained minister. *Id.* They also noted that the exemption had traditionally been applied “to relieve from the burden of taxation on a benefice of land or housing appropriated to a settled pastor of a church having a local congregation.” *Id.* Formal ordination was not required because some churches either do not have or cannot afford formal ordination, and allowing the exemption in those situations was in keeping with the “traditional practice of exemption church owned property which is occupied by one who attends to the pastoral needs of a congregation.” *Id.*
19. The Tax Court found those cases persuasive and held that to qualify for a parsonage exemption, a taxpayer must show at “the minimum” that “individuals residing in the parsonage perform the pastoral duties of an ordained minister.” *Id.* The Court denied the petition for judicial review because the taxpayer did not offer sufficient evidence about the people who lived at the duplex. *Id.*
20. Like the taxpayer in *Seventh Day Adventists*, the Temple offered very little evidence about Olson’s role in its organization beyond her testimony that she and her husband founded the organization and that she was ordained as a nun and priest. *As Seventh Day*

*Adventists* makes clear, however, labels like minister, nun, or priest do not control. And the mere fact that a building owned by a church or religious society houses someone associated with, or even employed by, the organization is not enough to qualify a home as a parsonage. Instead, a taxpayer must show that the person performs the pastoral duties of an ordained minister, such as attending to the pastoral needs of a local congregation. The Temple offered no evidence to show Olsen did those things. Indeed, it offered nothing to show what Olsen did in her capacity as a priest, beyond her vague testimony about engaging in outreach and holding religious meetings and meditation classes. That is not enough to qualify her home as a parsonage.

21. But that does not end our inquiry. The Temple also claimed a religious-purposes exemption under the general exemption statute. We therefore turn to that claim.

## **2. Religious-purposes exemption**

22. The general exemption statute (I.C. § 6-1.1-10-16(a)) exempts all or part of a building owned, occupied, and predominantly used for religious or other specified purposes. *See* I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36.3; *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Ass'r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct.2009). That exemption extends to the land on which the building is situated and to personal property owned and used in such a manner that it would be exempt if it were a building. I.C. § 6-1.1-10-16(c) and (e). Property is predominantly used or occupied for exempt purposes if it is used or occupied for those purposes more than 50% of the time that it is used or occupied in the year that ends on the assessment date. I.C. § 6-1.1-10-36.3(a). If property used or occupied by a church or religious society satisfies the predominant use test, it is “totally exempt” from property taxes. I.C. § 6-1.1-10-36.3(c)(2).
23. Determining whether a property is owned, occupied, and predominantly used for an exempt purpose is a fact sensitive inquiry. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Ass'r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital., Inc.*, 818 N.E.2d 1009, 1018; *see also, Long v. Wayne Twp. Ass'r*,

821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).

24. The Temple failed to show that the property was predominantly used for religious purposes. Residential and religious uses are not mutually exclusive, but the Tax Court has explained that “[t]he State Board acts properly when it takes a hard look at the use of certain property, especially where, as here, the property's use does not have the normal hallmarks of religious activity.” *Alte Salems Kirche, Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 810, 815 (Ind. Tax Ct. 1998). The one clear and overriding use of the subject property was as Olsen’s home. The property bears no outward signs of religious use, and it is indistinguishable from other homes in its residential neighborhood. Olsen lived at the property and even allowed other family members to live there during the year leading up to the March 1, 2015 assessment date. She and her husband moved to the property for purely personal reasons—to be near family members who could help care for her husband—rather than to further the Temple’s religious mission. Indeed, the Temple offered scant information of its existence as an entity distinct from Olsen and her husband, or that it, rather than Olsen and her husband, controlled the property. While Olsen’s religious beliefs may permeate her life, that fact by itself does not transform her occupancy of the home into a religious use.
25. Similarly, Olsen’s vague references to conducting outreach, holding religious meetings, and holding meditation classes do not suffice to show either that her occupancy was itself religious or incidental to a religious use, or that separate religious uses of the property predominated over her residential use. The Temple did not show what outreach activities Olsen actually conducted, much less that she used the home for those activities. While Olson claimed to use the home for religious meetings and meditation classes, she did not indicate how often those events occurred, if at all, during the year leading up to the March 1, 2015 assessment date. And that assumes the meditation classes are related to the Temple’s religious practices, something the Temple did not offer any evidence to show. Thus, there is no evidence from which we may conclude that religious uses

predominated over Oslen's use of the home as her residence. *See Fraternal Order of Eagles #3988, Inc. v. Morgan County Property Tax Assessment Bd. of Appeals*, 5 N.E.3d 1195, 1202 (Ind. Tax Ct. 2014)(holding that the taxpayer's failure to provide a comparison of the amounts of time that the property was used for exempt and non-exempt purposes was fatal to its claim.).

26. This case therefore differs from others where Indiana courts have found that the use of a building for living quarters was incidental to a religious purpose. For example, in *State Bd. of Tax Comm'rs v. Wright*, the property at issue consisted of primitive cabins located on church grounds that were temporarily occupied by ministers and others while attending church conferences. *State Bd. of Tax Comm'rs v. Wright*, 139 Ind. App. 370, 250 N.E.2d 57, 372-74, 380 (1966). Similarly, in *Alte Salems Kirche*, the relevant property at issue was a mobile home that a witness testified played a large role in reducing vandalism on property that also contained a church, because the home maintained a human presence on the property. *Alte Salems Kirche*, 694 N.E.2d at 815-16. In the Tax Court's view, that at least posed a factual question as to whether the mobile home was reasonably necessary to further an exempt purpose. *Id.* By contrast, to the extent we may draw any conclusions from the sparse evidence offered in this case, they are that Olsen primarily used the home as her residence, and that any other activities were incidental.

#### CONCLUSION

27. The Temple's property is not entitled to a parsonage exemption under Indiana Code § 6-1.1-10-21(b) or a religious purpose exemption under Indiana Code § 6-1.1-10-16. Accordingly, we find that the property was 100% taxable for the 2015 assessment year.

This Final Determination of the above captioned matter is issued by the Board on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.